

City and County of San Francisco

Office of the Controller - City Services Auditor

Audits Division

Audit Report

PORT COMMISSION:

Management Letter on the Port's
Administration of Its Lease With
Allright Cal., Inc.

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CITY AND COUNTY OF SAN FRANCISCO

**OFFICE OF THE CONTROLLER
FINANCIAL AUDITS DIVISION**

**Ed Harrington
Controller**

**Monique Zmuda
Deputy Controller**

October 22, 2004

Audit Number 03001

San Francisco Port Commission
Pier One
San Francisco, CA 94111

President and Members:

The Office of the Controller (Controller) presents its management letter on the administration of the lease with Allright Cal., Inc. (Allright) by the staff of the Port Commission (Port). Allright's two-year lease to operate surface public parking lots on Port property ended on May 31, 2001, and Allright continues to operate a primary and two expansion parking lots on a month-to-month basis. Our concession audit report, dated October 22, 2004, addressed whether Allright complied with the reporting and rental payment provisions of its lease with the Port. This report addresses matters not directly related to Allright's compliance with lease provisions, but to the Port's management of the lease.

- Although the lease has a provision providing for a month-to-month tenancy after the expiration of its term, the Port's real estate division has allowed Allright to continue operating the parking lots for more than three years on a month-to-month basis without seeking the approval of the Port Commission to do so.
- The Port's real estate division improperly issued \$129,450 in rent credits to Allright to compensate it for incurring additional expenses related to the primary parking lot and the expansion parking lots. However, the lease contains no provision for issuing rent credits, and the Port staff could not provide us any evidence that the Port Commission authorized granting any rent credits to Allright.
- Port real estate staff improperly waived more than \$4,000 in late charges and penalty charges assessed against Allright for not making timely rent payments and timely submission of required reports. The lease, however, does not provide for any waivers of penalties or interest assessed against Allright.

The Controller's Financial Audits Division will be working with the Port to monitor the status of the recommendations made in the report.

Respectfully submitted,

Noriaki Hirasuna
Director

BACKGROUND

The Office of the Controller (Controller) recently completed its concession audit of Allright Cal., Inc. (now Central Parking System). Allright Cal., Inc. (Allright) has a two-year lease to operate surface public parking lots on Port property in San Francisco. The lease is for a primary parking lot at Seawall Lots 321, 323, and 324 on The Embarcadero, and for expansion parking sites, including those at Piers ½, 3, and 27/29. The lease term ended on May 31, 2001, and Allright continues to operate the primary and two expansion lots on a month-to-month basis. Our concession audit report, dated October 22, 2004, addressed whether Allright complied with the reporting and rental payment provisions of its lease with the Port. This management letter addresses matters not directly related to Allright's compliance with lease provisions, but to the Port's management of the lease.

FINDINGS

The Port's Real Estate Division Did Not Obtain the Port Commission's Approval to Extend Allright's Lease

The Port awarded a two-year lease to Allright in 1999 after conducting a competitive bidding process. The lease was approved by the Port Commission, and also approved by the Board of Supervisors because the lease would generate more than one million dollars during its term. However, when the lease ended on May 31, 2001, the Port's real estate division allowed Allright to continue operating parking lots on a month-to-month basis. As of June 30, 2004, Allright has operated the parking lots on a month-to-month basis for more than three years, and Port staff have not yet requested the Port Commission to approve the extension of the lease. Although the lease has a provision providing for a month-to-month tenancy after the expiration of its term, Port staff should have sought to obtain the Port Commission's approval when Port staff extended significantly the term of the lease that had been approved by the Port Commission and the Board of Supervisors.



Further, the San Francisco Administrative Code, Section 23.33, recommends that all leases of this type be awarded in accordance with competitive bidding procedures, unless the procedures are impractical or impossible. We believe it may be in the best interests of the City to again conduct a competitive bidding process to award the lease to allow this firm to continue operating the parking lots on a month-to-month basis.

The Port's Real Estate Division Improperly Issued Rent Credits to Allright

The Port's real estate division improperly issued \$129,450 in rent credits to Allright to compensate it for incurring additional expenses related to the primary parking lot and the expansion parking lots. However, the lease contains no provision for issuing rent credits, and we could not find in the Port Commission agendas, from March 1999 through November 2003, that the Port Commission authorized granting any rent credits to Allright. The Port staff acted improperly by not obtaining its commission's approval to issue the rent credits or to modify the lease to provide for the rent credits. The details of the finding, and our recommendation, are discussed in a separate report on our concession audit of Allright, which we issued on October 22, 2004.

The Port Does Not Have Adequate Controls Over the Waiver of Late Charges

The Port's real estate division waived more than \$4,000 assessed against Allright for paying its rent late. The lease requires Allright to pay late charges, as additional rent, at the monthly rate of one and a half percent of rent amounts due and unpaid for more than 30 days, and penalty charges if the Port does not receive the monthly percentage rent statement as required. The lease contains no provision for waiver of late charges or penalty charges for any reason, and the Port does not have a written policy specifying the instances in which a waiver may be warranted.

During the period covered by our audit, Port real estate and accounting staff waived a total of \$4,215 in late and penalty charges that it assessed against Allright in 14 months. Although the waiver of late and penalty charges may have been reasonable under certain circumstances, when, for example, the Port made errors in processing rent payments, there were, however, clear instances when such waivers appear unreasonable and unnecessarily granted.



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For example, the Port waived late charges totaling \$1,894, for three separate occasions, on the basis of Allright's assertion that its checks for the three months had been lost in the mail. If the Port wishes to waive late charges, it should have a formal written policy on the instances in which waivers of late and penalty charges are warranted, and specifying who is authorized to approve these waivers.

RECOMMENDATIONS

To ensure that Port staff properly manages the lease with Allright, as well as other Port leases, the Port Commission should take the following actions:

- Require Port staff to request the Port Commission to approve continuing the lease with the successor to Allright, Central Parking System, on a month-to-month basis. The Port Commission should also require staff to start the process to award a new lease based on a competitive bidding process to operate the parking lots. Port staff should make sure it obtains the approval of the Port Commission and the Board of Supervisors before awarding a new lease.
- Require Port staff to immediately review all other leases, and to determine the number of leases that have been extended on a month-to-month basis, and the duration of the extensions. Port staff should report this information to the Port Commission, as well as their plans to competitively bid the leases or to demonstrate that it has obtained proper approvals for not conducting competitive bids.
- Establish written guidelines specifically identifying the circumstances under which the Port's real estate division or other staff may waive late and penalty charges, and specifying who is authorized to approve these waivers. As part of the waiver process, the Port should include controls requiring another unit to review and approve any waivers granted by the real estate division.

The Port chose not to respond to this report, but the Port's supervising fiscal officer stated that the issues raised would be duly addressed by Port staff after issuance of the report.

We conducted this review according to the standards established by the Institute of Internal Auditors.

Staff: Robert Tarsia, Audit Manager
Kathy Buckley

cc: Mayor
Board of Supervisors
Civil Grand Jury
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